

MEMORANDUM DM 02-01

TO: All Virginia Underground Coal Mine Operators

FROM: Frank A. Linkous, Chief Division of Mines

SUBJECT: State-Designated Mine Rescue

DATE: January 29, 2002

Sections 45.1-161.73 through 45.1-161.76 of the Coal Mine Safety Laws of Virginia provide for state-designated mine rescue teams. These teams are also recognized by the Federal Mine Safety and Health Administration under Title 30, Part 49 of the Code of Federal Regulations. Three companies employing mine rescue teams have agreed to serve as state designated mine rescue teams. The companies are:

Clinchfield Coal Company
Lone Mountain Processing, Inc.
Paramont Coal Corporation

Each company provides a properly maintained mine rescue station and readily available mine rescue teams. Should a change occur in the state designated mine rescue teams, we will inform you at a later date.

Each mine operator wishing to have the state-designated mine rescue teams assigned to a mine must complete the following procedure:

- 1.) Complete the enclosed agreement. A separate agreement must be completed and returned for each mine to be served by the state-designated mine rescue teams.
- 2.) Submit the annual rescue fee under Section 3. Compensation of the original agreement. This fee of \$2,400.00 is required for each mine and must be in the form of a money order, cashier's check or certified check payable to the Treasurer of Virginia. The company may elect to pay the annual fee in four equal installments due February 15, May 15, August 15 and November 15, 2002.

January 29, 2002

- 3.) Submit a certificate of insurance providing evidence of the workers' compensation coverage with each agreement. The certificate must bear an endorsement requiring that the insurer notify the Department of Mines, Minerals and Energy, Division of Mines, whenever substantive changes are made in the policy including any termination, cancellation or failure to renew. Failure to maintain continual coverage shall result in the cancellation of the agreement between the Division and the Company.

Mines currently enrolled in the state-designated mine rescue program: Your coverage by state-designated mine rescue teams expires February 15, 2002. You must act to renew your agreement prior to February 15, 2002 to continue state-designated mine rescue team coverage.

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Enclosure

AGREEMENT

This Agreement made this _____ day of _____, 20____, by and between the Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Mines (hereinafter referred to as the Division) and

	/	
Company Name		Covered Mine Operation Mine No./Name Mine Index No.

(Hereinafter referred to as "Company")

In consideration of the mutual covenants and stipulations set out herein, the Division and the Company agree as follows:

1. **SCOPE**: Pursuant to Va. Code § 45.1-161.73, conditioned upon the payment by the Company to the Division of a fee in the amount provided in Paragraph 3 below for the mine owned or operated by Company which is the subject of the terms of this Agreement (herein "Covered Mine (Operation(s))", the Division shall make available two (2) or more state designated mine rescue teams to perform mine rescue work at the covered mine operation (hereinafter referred to as "Teams").

2. **DEFINITIONS**: For purposes of this Agreement, "Mine Rescue Work" shall mean services or work rendered by the Teams to search for, rescue or transport a person(s) endangered, trapped, injured or killed in a mine disaster or other emergency situation which must be performed while using self-contained breathing apparatus. Mine Rescue Work shall also include rehabilitation work at a Covered Mine Operation(s), which is necessary to search for, rescue or transport any person(s) at the mine. This Agreement shall not obligate the Teams to perform any work other than mine rescue work, and it is understood that activities such as penetrating and exploring old works, breaking sealed areas and similar efforts requiring the use of personnel with self-contained breathing apparatuses do not constitute Mine Rescue Work.

3. **DURATION OF COVERAGE**: The services to be provided pursuant to this Agreement shall commence on the later of February 15, 2002 or the date this Agreement is fully executed, and said services shall terminate on the sooner of February 15, 2003 or the date of termination established pursuant Paragraph 7 below.

4. **COMPENSATION**: Annual mine rescue fee for the Covered Mine Operation in the amount of \$2,400 is due and payable to the Division at time of execution of this Agreement (herein "Mine Rescue Fee"). However, the Company may elect in writing to pay the Mine Rescue Fee in four equal installments with \$600.00 due on February 15th, May 15th,

August 15th, and November 15th. Indicate the choice of fee payment below:

☐ **The Company elects to pay the Mine Rescue Fee in full.**

☐ **The Company elects to pay the Mine Rescue Fee in four equal installments.**

In the event the term of this Agreement is less than a full year, then the Mine Rescue Fee shall be prorated with the fee calculated at the rate of \$200.00 per month. The fees are non-refundable.

This Agreement is non-transferable. However, in the event the Mine Rescue Fee is paid in advance, and thereafter the name of the Covered Mine Operation(s) is changed or all the equipment and personnel at a Covered Mine Operation are moved to another location due to depletion of reserves or due to adverse conditions, then upon written request to and approval by the Chief, the unused portion of the Mine Rescue Fee paid hereunder may be applied to Mine Rescue Fees which become due for the new operation.

- 5. LIABILITY: Pursuant to Va. Code § 45.1-161.76, members of the Teams assigned to the Covered Mine Operation are deemed to be employees of the Company, and said Teams' members shall be covered by the Company's workmen's compensation insurance during their performance of any Mine Rescue Work at the Covered Mine Operation. The Company shall provide to the Division a certificate of insurance, which the Division may make available to the Teams assigned to the Covered Mine Operation(s). The certificate of insurance shall provide evidence that the Company's workmen's compensation coverage is in effect for each such mine. THE CERTIFICATE SHALL BEAR AN ENDORSEMENT REQUIRING THAT THE INSURER GIVE THE DEPARTMENT OF MINES, MINERALS AND ENERGY - DIVISION OF MINES AT LEAST 30 DAYS WRITTEN NOTICE WHENEVER SUBSTANTIVE CHANGES ARE MADE IN THE POLICY INCLUDING ANY TERMINATION, CANCELLATION OR FAILURE TO RENEW. The Division may require a new certificate of coverage at any time if it has reason to believe that proper coverage has ceased, been canceled or does not exist. This Agreement shall terminate if the Company fails to carry such insurance or fails to submit proof thereof to the Division as required or requested. Notice of such termination shall be sent by the Division to the Company and to the Teams assigned to the Covered Mine Operation(s).**

No Team member engaged in Mine Rescue Work at the Covered Mine Operation shall be liable for civil damages for acts or omissions resulting from the rendering of such mine rescue work unless the act or omission is the result of gross negligence or willful misconduct. Further, no mine operator or company that provides its personnel to serve as a member of a Team that performs Mine Rescue Work at an operation other than its own shall be liable

for any civil damage for acts or omissions resulting from its personnel's rendering of such Mine Rescue Work.

- 6. DUTIES OF TEAMS AND COMPANY:** Unless otherwise engaged in Mine Rescue Work, any Team assigned to perform Mine Rescue Work for the Covered Mine Operation shall respond to requests for such services initiated by either the Division and/or the Company. No Team is obligated to perform any such Mine Rescue Work, if after arriving at the mine where a disaster or other emergency situation has occurred or exists, the person(s) in charge of the Team(s) reasonably determine that the situation presents a real and present danger of injury or death to any member of the Team.

The Team is responsible for equipping each member of the Team and any and all of its mine rescue stations. The Team is responsible for maintaining its equipment in a safe, operable and permissible condition. The Team is responsible for training its members in proper mine rescue procedures. The Team is required at all times it is obligated to render Mine Rescue Work to the Covered Mine Operation to meet the requirements of the regulations of the Federal Mine Safety and Health Administration at 30 CFR Part 49 or any successor provision.

The Company shall supply or have on hand at the mine all equipment needed for the Mine Rescue Work which is normally used in the daily operations of a mine, including but not limited to, timbers, brattice cloth and concrete block.

- 7. CANCELLATION AND TERMINATION:** The Company may terminate this agreement at any time upon written notice to the Division. The Division may cancel or terminate this Agreement upon written notice to the Company upon the happening of one or more of the following events:
- a. During the duration of this Agreement, the Company fails to pay the annual fee, or any applicable installment thereof, by the end of the month in which it is due;
 - b. The Company fails or refuses to maintain Worker's Compensation Insurance which covers the Teams assigned to its Covered Mine Operation;
 - c. The Company fails to submit to the Division a certificate of coverage for its Worker's Compensation Insurance within ten (10) days of being requested by the Division to do so; or
 - d. If at any time during the term of this Agreement, there are no Teams participating in the program or the number of Teams participating are insufficient to make available to the Company at least two (2) Teams.

8. ENTIRE AGREEMENT: The entire Agreement between the parties is contained herein and in Va. Code §§ 45.1-161.73 through 45.1-161.76, which are incorporated herein by reference. No amendment or modification of this Agreement shall be effective unless it is reduced to writing and signed by both parties. This Agreement is expressly subject to any changes in State or Federal laws, rules or regulations that affect the services to be rendered pursuant hereto. This Agreement is being executed in duplicate effective as of the day and year first above written.

Company: _____

By: _____

Title: _____

Commonwealth of Virginia
Department of Mines, Minerals and Energy
Division of Mines

By: _____

Frank A. Linkous, Chief
Division of Mines